

AMENDED IN SENATE APRIL 7, 2008

SENATE BILL

No. 1244

Introduced by Senator Alquist

February 15, 2008

An act to amend Section 98.6 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1244, as amended, Alquist. Employment retaliation.

Existing law prohibits an employer from discriminating against an employee or applicant for employment because the employee or applicant has filed a claim with or instituted a proceeding before the Labor Commissioner relating to the employee's or applicant's rights, because the employee testifies or will testify in that proceeding, or because the employee or applicant exercised, on behalf of himself, herself, or others, rights afforded employees or applicants by the Labor Code. Existing law provides for reinstatement of and the payment of lost wages and work benefits to any employee who is subjected to adverse employment action because the employee filed a bona fide complaint with the Division of *Labor Standards Enforcement within the Department of Industrial Relations*. Existing law makes it a misdemeanor for an employer to take adverse employment action against employees who file bona fide complaints.

This bill would also prohibit an employer from discriminating against an employee or applicant for employment because a coworker, *as defined*, or immediate family member, as defined, has filed a claim with or instituted a proceeding before the Labor Commissioner relating to the coworker's or immediate family member's rights, because the coworker or immediate family member testifies or will testify in that

proceeding, or because the coworker or immediate family member exercised, on behalf of himself, herself, or others, rights afforded employees or applicants by the Labor Code.

Because this bill would expand the *number of persons protected against* acts of retaliation by an employer and create new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 98.6 of the Labor Code is amended to
2 read:

3 98.6. (a) (1) No person shall discharge an employee or in any
4 manner discriminate against any employee or applicant for
5 employment because the employee, applicant, coworker, or
6 immediate family member of the employee or applicant engaged
7 in any conduct delineated in this chapter, including the conduct
8 described in subdivision (k) of Section 96, and Chapter 5
9 (commencing with Section 1101) of Part 3 of Division 2, or
10 because the employee, applicant for employment, coworker, or
11 immediate family member has filed a bona fide complaint or claim
12 or instituted or caused to be instituted any proceeding under or
13 relating to his or her rights, which are under the jurisdiction of the
14 Labor Commissioner, or because the employee, coworker, or
15 immediate family member has initiated any action or notice
16 pursuant to Section 2699, or has testified or is about to testify in
17 any such proceeding or because of the exercise by the employee,
18 applicant for employment, coworker, or immediate family member
19 on behalf of himself, herself, or others of any rights afforded him
20 or her.

21 (2) For purposes of this section, ~~“immediate~~ *the following terms*
22 *have the following meanings:*

1 (A) “Immediate family member” means a spouse, registered
2 domestic partner, child, brother, sister, mother, father, aunt, uncle,
3 or cousin, who is also an employee or applicant for employment.

4 (B) “Coworker” means an individual who works with, or
5 formerly worked with, the employee or applicant in the same crew
6 or work group, or at the same location and under the same direct
7 supervision as the employee or applicant, and is known by the
8 employer to be so closely associated with the employee or applicant
9 exercising his or her rights under this chapter that it would
10 discourage or prevent the employee from pursuing those rights.

11 (b) Any employee who is discharged, threatened with discharge,
12 demoted, suspended, or in any other manner discriminated against
13 in the terms and conditions of his or her employment because the
14 employee engaged in any conduct delineated in this chapter,
15 including the conduct described in subdivision (k) of Section 96,
16 and Chapter 5 (commencing with Section 1101) of Part 3 of
17 Division 2, or because the employee has made a bona fide
18 complaint or claim to the division pursuant to this part, or because
19 the employee has initiated any action or notice pursuant to Section
20 2699 shall be entitled to reinstatement and reimbursement for lost
21 wages and work benefits caused by those acts of the employer.
22 Any employer who willfully refuses to hire, promote, or otherwise
23 restore an employee or former employee who has been determined
24 to be eligible for rehiring or promotion by a grievance procedure,
25 arbitration, or hearing authorized by law, is guilty of a
26 misdemeanor.

27 (c) (1) Any applicant for employment who is refused
28 employment, who is not selected for a training program leading
29 to employment, or who in any other manner is discriminated
30 against in the terms and conditions of any offer of employment
31 because the applicant engaged in any conduct delineated in this
32 chapter, including the conduct described in subdivision (k) of
33 Section 96, and Chapter 5 (commencing with Section 1101) of
34 Part 3 of Division 2, or because the applicant has made a bona fide
35 complaint or claim to the division pursuant to this part, or because
36 the employee has initiated any action or notice pursuant to Section
37 2699 shall be entitled to employment and reimbursement for lost
38 wages and work benefits caused by the acts of the prospective
39 employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in subparagraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.